

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.61 of 1994

Manoj Singh, son of Shri Lalan Singh, resident of Village-Kharhari, P.S.-Mufassil, District-Gaya.

... ... Appellant/s
Versus

The State Of Bihar

... ... Respondent/s

with
Criminal Appeal (DB) No. 63 of 1994

1. Ramashish Singh, son of late Lakhan Singh
2. Chhote Lal Singh, son of late Ram Janam Singh.
3. Bilash Singh, son of late Ram Lakhan Singh
4. Amrendra Singh, son of Sri Bilash Singh
5. Vinoy Singh, son of Sri Ramjee Singh
6. Jatan Singh, son of late Sahdeo Singh
7. Anil Singh
8. Santosh Singh both sons of Sri Bigan Singh.
9. Nepali Singh alias Mithilesh Kumar Singh, son of Jai Singh @ Arun Kumar Singh,

All residents of Village-Kharhari, P.S. Mufassil, District-Gaya.

... ... Appellant/s
Versus

The State of Bihar

... ... Respondent/s

with
Criminal Appeal (DB) No. 138 of 1994

Udai Singh @ Udai Kumar Singh, son of Sri Ramashish Singh, resident of Village-Kharahari, P.S. Mofassil, District-Gaya.

... ... Appellant/s
Versus

The State Of Bihar

... ... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate
		Mr. Rakesh Kumar Singh, Advocate
		Mr. Rituraj Raman, Advocate
		Mr. Tej Nr. Singh, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, A.P.P.



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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 07-11-2017

Challenging their convictions for various offences under Sections 302/149, 307, 452 of the Indian Penal Code and 27 of the Arms Act and sentencing them to undergo rigorous imprisonment for life, these appeals have been filed under Section 374 (2) of the Code of Criminal Procedure.

In Criminal Appeal No.61 1994, the sole appellant Manoj Singh has been convicted to undergo rigorous imprisonment for life under Section 302/149 of the Code, seven years rigorous imprisonment for offence under Section 307 of the Code and three years rigorous imprisonment for offence under Section 452 and five years rigorous imprisonment for offence under Section 27 of the Arms Act. The sole appellant Udai Singh @ Udai Kumar Singh in Criminal Appeal No.138 of 1994 has been convicted to life imprisonment for offence under Section 302/149 of the Code and life imprisonment for offence under Section 302 of the Code and three years rigorous imprisonment for offence under Section 452 of the Code and five years rigorous imprisonment for offence under Section 27 of the Arms Act, whereas appellants nine in



number in Criminal Appeal No.63 of 1994 have been convicted to rigorous imprisonment for life for offence under Section 302/149 of the Code, two years rigorous imprisonment for offence under Section 148 of the Code and one year for offence under Section 147 of the Code. However, in this appeal, appellant no.1 Ramashish Singh, appellant no.3 Bilash Singh and appellant no.6 Jatan Singh have expired and their appeals stand abated. All of them have been convicted by a judgment rendered on 31st January, 1994 by the Additional District and Sessions Judge I, Gaya in Sessions Trial No.458/120 of 1992.

It is the case of the prosecution that informant Subodh Kumar P.W.14 lodged the FIR to the effect on 27.08.1991 at 8 P.M. in Village Kharhari to the Assistant Sub-Inspector of Police, P.W.18 that a calf belonging to accused Vijoy Singh was grazing in the paddy field when the informant's brother Binod Kumar, P.W.15, chased it away. Annoyed by this act of Binod Kumar, accused Udai Singh and Vijoy Singh, both sons of Ramashish Singh of the same village, assaulted Binod Kumar by slapping him. After this incident took place when P.W.12 Narain Sao, father of the informant, came back to the village from town and when he went to enquire about the incident to the house of the accused persons, he met Udai Singh on the way and when he enquired about the



incident, it is alleged that Udai Singh called the other accused persons who came armed with deadly weapons. Udai Singh armed with a gun ordered to surround Narain Sao, Narain Sao ran, entered into his house, shut the door and started raising alarm from his courtyard. It is said initially the accused persons tried to break open the door, but when they failed, Udai Singh and Manoj Singh climbed on the roof, Udai Singh shot at Shivpujan Sao, deceased, and Manoj Singh shot at Shiv Sagar Sah, injured P.W.17 and they ran away. Based on the aforesaid information, FIR was lodged and the prosecution was initiated.

Ext.1 is the FIR and the prosecution examined 19 witnesses in support of the case. The witnesses included P.W.2, an eye witness to the incident and P.W.8, another eye witness to the incident, namely Rameshwar Sao and Parmeshwar Sao, apart from P.W.5 Kishori Sao, who saw the incident. P.W.5 and P.W.8 are said to have seen the incident from the roof top of their house and P.W.2 Rameshwar Sao also saw the incident from the roof top of his house and according to them Udai Singh and Manoj Singh had fired the shot. Udai Singh is said to have caused the injury resulting into death of Shiv Pujan Sao after two days treatment in the hospital and Manoj Singh is said to have caused injury to Shiv



Sagar Sao, P.W.17, for which he is convicted under Section 302 of the Indian Penal Code.

Even though, learned counsel for the appellants took us through the statements of the informant and the investigating officer and tried to demonstrate that there are two sets of stories, two different FIRs have been lodged and the lodging of the FIR in village Kharhari at the place of the incident is not proved, he emphasized that in this case, statutory and mandatory requirement of the provision of Section 313 of the Code of Criminal Procedure has not been complied with. He placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Sukhjit Singh v State of Punjab** [(2014) 10 SCC 270] and the judgments relied upon in the said case, namely **Ranvir Yadav v. State of Bihar** [(2009) 6 SCC 595]; **Tara Singh v State** [AIR 1951 SC 441]; and **Hate Singh Bhagat Singh v. State of Madhya Bharat** [AIR 1953 SC 468] and **Ajay Singh v. State of Maharashtra** [(2007) 12 SCC 341], to say that that as the statutory and mandatory requirement as contemplated under Section 313 of the Code of Criminal Procedure has not been fulfilled in this case, the entire case of the prosecution fails as the trial stands vitiated.



Learned counsel for the State took us through the statement of P.Ws 2, 5 and 8 to show that the case of the prosecution is proved.

We have considered all the aspects in detail and we find that as far as the appellants in Criminal Appeal No.63 of 1994 are concerned, three of the appellants therein, namely Ramashish Singh, Bilash Singh and Jatan Singh, have expired and against the remaining six appellants, namely Chhote Lal Singh, Amrendra Singh, Vinoy Singh, Anil Singh and Santosh Singh and Nepali Singh alias Mithilesh Kumar Singh, except for indicating their presence by omnibus statement, no specific overtact is attributed to them. The main allegation is against the appellant Udai Singh in Criminal Appeal No.138 of 1994 and Manoj Singh in Criminal Appeal No.61 of 1994 and if we analyse the statement of these two appellants recorded under Section 313 of the Code of Criminal Procedure, we find that to both these appellants only two questions have been put with regard to complying with the statutory requirement of Section 313 of the Code of Criminal Procedure, i.e. recording the statement of the accused persons. The first question put to them is to the effect that it is alleged against you that on 27.08.1991 at village Kharhari, police station Mufassil, District-Gaya, you along with your associates with common intention



formed an unlawful assembly, armed with gun and other instruments entered the house of the complainant-informant Subodh Kumar and by climbing on the roof top fired shot thereby causing injury to Shiv Sagar Sah and Shiv Pujan Sah. The second question asked is that you have heard the witnesses what is your explanation. These are only two questions asked not only to these appellants, but also to all the appellants. In fact, cyclostyle form question, as indicated hereinabove is put to each of the appellant. That in sum and substance is the compliance made with regard to fulfilling the statutory requirement under Section 313 of the Code of Criminal Procedure.

Now, if we analyze the law laid down by the Hon'ble Supreme Court with regard to complying the statutory requirement of Section 313 of the Code of Criminal Procedure, we find that in the case of **Tara Singh** (supra) in para 30, Hon'ble Supreme Court emphasizes strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code as was then existing and holds that it is not a proper compliance to read out a long string of questions and answers made in the committal court and thereafter ask as to whether the same is correct. The Supreme Court further says that it is also not sufficient compliance to string together a long series of facts and



ask the accused what he has to say about them. The Supreme Court holds that the accused must be questioned separately about each material circumstances which is intended to be used against him. It is held by the Supreme Court that the whole object of Section 342 is to afford the accused a fair and proper opportunity of explaining the circumstances which appear against him. It is held that the question must be fair and must be couched in such a form that an ignorant or illiterate person will be able to appreciate, understand and give his explanation. It is held that if the requirement of the section is not followed, grave prejudice is caused to the accused and the trial stands vitiated on this count.

Thereafter, again in the case of **Hate Singh Bhagat Singh** (supra), the same principle has been reiterated and, finally, in the case of **Ajay Singh** (supra), it is held that the questions put to the accused must be framed in such a way so as to enable the accused to know what he has to explain, what are the circumstances against him for which explanation is needed. It is held by the Hon'ble Supreme Court in the aforesaid case that the whole object of this Section is to afford to the accused a fair and proper opportunity of explaining the circumstances which appear against him and the same principle as laid down by the Hon'ble Supreme Court in the case of **Tara Singh** (supra) is reiterated. After considering all the



three judgments as indicated hereinabove in the case of **Sukhjit Singh** (supra), the Hon'ble Supreme Court holds that after analysing the enunciation of law, there is no scintilla of doubt that when the requisite questions have not been put to the accused it has caused immense prejudice to him and the trial stands vitiated.

If that is the legal principle laid down by the Hon'ble Supreme mandating the requirement of compliance with Section 313 of the Code of Criminal Procedure and when we analyze the aforesaid compliance in the present case, we have no hesitation in holding that the mandatory requirement of law in this case has not been complied with and if it has caused prejudice to the accused, on this count alone, the entire conviction stands vitiated.

Accordingly, we allow this appeal, quash the order of the trial Court convicting the appellants, acquit them of all the charges levelled against them. Their bail bonds be discharged and they be set free.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)
Sunil/-

AFR/NAFR	NAFR
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